NJ apparently did not rely on this information, *per se*, in defining its proposed "relief" area,[74] but rather identified specific CLECs and the quantities of loops they serve using self-provisioned switches in support of its claim that the Board should find non-impairment in certain proposed geographic markets.[75]

61. Verizon NJ proposed the use of MSAs and density zones, the former, because they "have well-established geographic boundaries" and "are specifically designed to capture economic communities of interest."[76] Verizon NJ also referred to the FCC's *Pricing Flexibility Order* in support of the use of MSAs.[77] Verizon NJ explained further that "the Board may choose to define the market more narrowly" and specifically suggested that the Board might differentiate among the pricing density zones within the relevant MSAs. According to Verizon NJ, density zones reflect where customers are actually served, competitors' ability to serve each group of customers, and CLECs' targeting of particular customers. Although Verizon NJ opposed the use of the wire center because it contended this geographic boundary would be "overly granular" and thus "ignore

John White ("West/White").

[74]As used in this Affidavit, "relief" area refers to the geographic area within which Verizon NJ sought a finding of non-impairment by the Board.

[75]West/Peduto Direct (Verizon NJ), Attachment 2.

[76]*Id.*, at 11.

[77]*Id.*, at 11-12, citing *Access Charge Reform*, Fifth Report and Order and FNPRM, 14 FCC Rcd. 14,221 (August 27, 1999) ("Pricing Flexibility Order").

available scale and scope economies,"[78] Verizon NJ did not offer evidence in support of this assertion. As I discuss below, Verizon NJ has not demonstrated that its proposed geographic market is appropriate.

62. As defined by the Office of Management and Budget ("OMB"),

> Metropolitan Statistical Areas have at least one urbanized area of 50,000 or more population, plus adjacent territory that has a high degree of social and economic integration with the core as measured by commuting ties. ... If the specified criteria are met, a Metropolitan Statistical Area containing a single core with a population of 2.5 million or more may be subdivided to form smaller groupings of counties referred to as Metropolitan Divisions.[79]

Verizon NJ's filing would affect the availability of unbundled switching in the New Jersey portions of the New York-Newark-Edison, NY-NJ-PA MSA ("Newark MSA") and the Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA ("Camden MSA"). The Newark MSA includes three Metropolitan Divisions: Edison, New Jersey; Newark-Union, NJ-PA; and New York-Wayne-White Plains NJ-NJ (part). The Camden MSA includes two Metropolitan Divisions: Camden and Wilmington, DE-MD-NJ (part).[80]

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[78] *Id.*, at 13-15.

[79] OMB Bulletin No. 03-04, Attachment, Statistical and Science Policy Branch, Office of Information and Regulatory Affairs, Office of Management and Budget, June 6, 2003 ("OMB Bulletin"), Attachment at 2.

[80] *OMB Bulletin*, Attachment, at 117.

63. Verizon NJ's proposal encompasses four geographic markets, which it depicted in a map included with its filing with the Board and which I have reproduced as Attachment SMB-4.[81] Verizon NJ refused to specify the precise number of the geographic markets that it proposes.[82] It appears that, if regulators were to adopt Verizon NJ's second recommendation (*i.e.*, the use of density zones within MSAs), Verizon NJ intended four distinct markets: density zone 1 and density zone 2 in each of the two relevant MSAs, the Newark and the Camden MSAs.[83] For sake of reference, these could be identified as follows:

- Zone 1 Newark MSA market;
- Zone 2 Newark MSA market;
- Zone 1 Camden MSA market; and
- Zone 2 Camden MSA market.

67. Verizon NJ's depiction of its proposed market boundaries in the map that it included with its impairment filing does not include the boundaries of the wire centers within the four proposed relief areas.[84] Verizon NJ was unwilling, in response to a data request propounded by the Ratepayer

[81]West/Peduto Direct (Verizon NJ), Attachment 3.

[82]Verizon NJ response to RPA-TRO-91.

[83]Verizon NJ response to RPA-TRO-92; West/Peduto Direct (Verizon NJ), Attachment 3.

[84]West/Peduto Direct (Verizon NJ), Attachment 3 (reproduced as Attachment SMB-4 to this Affidavit).

Advocate, to provided this level of granular market information.[85] Because Verizon NJ was unable or unwilling to provide this information, I superimposed municipal boundaries (using publicly available geographic data), which roughly approximate wire center boundaries, on the map that Verizon NJ submitted with its filing for a finding of non-impairment.[86]

68. Wire center boundaries provide useful granular data, which contribute to an informed determination of the appropriate market boundaries and subsequently to an assessment of whether impairment exists within a particular geographic market. The map that I created (which combines information about Verizon NJ's proposed relief areas with information about municipal boundaries) provides a surrogate of this type of information. As an integral part of their impairment filings with the FCC, ILECs should identify the boundaries of their wire centers and proposed market areas in electronic format capable of being manipulated by geographic information systems ("GIS")[87] to enable the FCC first to assess whether ILECs' proposed boundaries correspond with rational economic markets, and then to evaluate whether and where impairment exists.

69. My examination of Verizon NJ's proposed market areas showed that its recommended boundaries are illogical. As Attachment SMB-6 shows, Verizon NJ's proposal would yield the

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[85]The data request and Verizon NJ's response (RPA-TRO-101) is reproduced as Attachment SMB-5.

[86]The source of the geographic information is the New Jersey Department of Environmental Protection. See Attachments SMB-6 and SMB-7.

[87]GIS is a computer system capable of storing, manipulating, and displaying data about geographic features and associated tabular data.

unusual situation in which Kearny, which is a zone 2 area in the Newark MSA and which is entirely surrounded by a zone 1 area, would apparently nonetheless be considered as part of the rest of the non-contiguous zone 2 market (*i.e.*, the region including, among other locations, West Orange). Attachment SMB-6 also shows that Verizon NJ's proposed market would entirely surround, but not include, another location, namely the Zone 3 Oakland location.

70. Attachment SMB-7 shows that Verizon NJ's proposal would replicate an illogical result in the Camden MSA in a slightly different manner. There are two non-contiguous zone 2 markets that Verizon NJ apparently seeks to define as a single market (the Camden Zone 2 market), despite the fact that they are separated by "non-market" (*i.e.*, Density Zone 3) regions. Although Verizon NJ indicated that the Board could choose to use density zones, this alternative option that Verizon NJ depicts lacks any logical basis or empirical support. The geographic analysis shown in Attachments SMB-6 and SMB-7 is not intended to be exhaustive, but rather to provide the results of a detailed examination of a portion of Verizon NJ's market area.

Verizon NJ's proposed delineation between mass market and enterprise customers

71. Verizon NJ recommended that the cross over (or "cut off") between mass market and enterprise customers be determined by whether customers are being served with voice grade DS0 circuits or DS1 loops. In support of this recommendation, Verizon NJ observed that the "objective behavior of the CLEC" corresponds to what makes "economic sense" for the CLEC.[88] However, as I discuss in Section III above, contrary to Verizon NJ's assertion in its filing with the Board,

[88] West/Peduto Direct (Verizon NJ), at 16.

Verizon NJ now seeks to implement the four line carve-out, as described in the *UNE Remand Order.*[89]

Data submitted by Verizon NJ regarding CLECs' presence in New Jersey

72. Verizon NJ used its internal databases to determine where and to which carriers Verizon NJ leases UNE loops, including enhanced extended links ("EELs"),[90] as of June 30, 2003 (the "Line Count Study") and also used the E911 database to determine residential customers that carriers serve using their own loop facilities. Verizon NJ asserted that its Line Count Study underestimates CLEC presence because it does not include those CLECs that serve customers using their own switching and loop facilities, such as cable telephony providers.[91] Verizon NJ summarized these data in Attachment 2 its testimony, and asserted that nine CLECs serve mass market customers in the Newark MSA and that five CLECs serve mass market customers in the Camden MSA, using self-provisioned switches. Based on this analysis, Verizon NJ asserted that the self-provisioning trigger is met in these markets.[92]

[89] *UNE Remand Order*, ¶¶ 276-298.

[90] An EEL, which typically consists of an unbundled loop and interoffice transport, provides a way to connect a CLEC switch to customers at distant central offices.

[91] West/Peduto Direct (Verizon NJ), at 22.

[92] *Id.*, at 27, 31. Although Verizon NJ considers Attachment 2 to its testimony to be proprietary, in its redacted testimony, Verizon NJ refers to the nine CLECs in the Newark MSA and to the five CLECs in the Camden MSA. *Id.*

Data examined by the Ratepayer Advocate, including data submitted by industry participants other than Verizon NJ

Background

73. In addition to examining the data that Verizon NJ included with its filing for relief in certain markets, I also examined two other broad categories of data. First, I examined the data and information that Verizon NJ provided in response to discovery propounded by the Ratepayer Advocate as well as by other parties.[93] Where I rely on these data in my analysis and findings in this Affidavit, I include the citations to these responses. Also, the Board's Staff and the Ratepayer Advocate propounded data requests to CLECs operating in New Jersey. Many CLECs responded that they did not provide local exchange services in New Jersey, and, therefore, I excluded them from my analysis. Although I examined the responses provided by numerous CLECs, I focused my efforts to obtain responses from those CLECs that Verizon NJ held out as providing evidence of non-impairment. Eventually, data responses were received to the Ratepayer Advocate's requests (albeit not complete in all instances) from the ten CLECs that Verizon NJ identified in Attachment 2 to its direct testimony. I rely on their responses to form my conclusions and recommendations.

74. Attachment SMB-8 to this Affidavit includes an excerpt of the data requests issued by the Ratepayer Advocate to CLECs. The excerpt includes those data requests that yielded the CLEC-provided data I consider most useful to my application of the FCC's trigger to New Jersey's local

[93] The Ratepayer Advocate issued 159 data requests to Verizon NJ and CLECs in the Board's proceeding.

markets. CLECs submitted their responses during the fourth quarter of 2003. As RPA-TRO-16 indicates, the Ratepayer Advocate requested that CLECs provide up-to-date information as of January 15, 2004, but, with the Board's proceeding suspended, CLECs did not submit revised responses.

75. If the FCC determines that more up-to-date data are required to enable it to assess impairment, I recommend that it require Verizon NJ to submit a new impairment filing, based on recent data, and with information disaggregated to the wire center level. Within each wire center, Verizon NJ should provide information separately (in spreadsheet and printed format) as to its quantities of (a) residential customers; (b) residential lines; (c) businesses with one line; (d) businesses with two lines; (e) businesses with three lines, etc. The FCC should direct CLECs to provide comparable information. All carriers should be required to provide statewide totals for each of these categories.

76. Comprehensive granular data are essential to enable the FCC to consider whether the CLECs that Verizon NJ identifies in Attachment 2 to its direct case are "operationally ready and willing to provide service to all customers in the entire market, as that market is defined,"[94] and, in making that assessment, the readiness and willingness should be measured by whether CLECs *actually* serve customers. Furthermore, the FCC's stated intent that the competitive switch providers that are providing services only to a segment within the market should not be counted is

[94] *TRO,* ¶ 500, footnote omitted.

an important objective.[95] If a CLEC has self-provisioned a switch within a FCC-designated market, but only seeks to attract business customers (for example, the CLEC simply offers services that compete on price with the business market segment), then their offerings cannot be considered viable substitutes for the residential market. In this example, the CLEC is simply serving "a segment within the market," and, therefore, the CLEC's presence would not satisfy the self-provisioning trigger. Carriers that serve a few isolated and *de minimus* segments within the Newark and Camden MSAs are irrelevant to an impairment analysis.

77. I conducted a detailed analysis of the data that the industry submitted in response to various parties' data requests and that Verizon NJ submitted in support of its filing (and its responses to data requests). I have included numerous attachments to this Affidavit, which summarize my analysis and which support my finding that, using economically appropriate markets, the FCC-established self-provisioning trigger is not met in New Jersey.

78. Many of the CLECs that Verizon NJ identified in its submission to the Board are irrelevant to the self-provisioning trigger. Verizon NJ relies on switch self-provisioning by CLECs that offer service in certain parts of New Jersey in support of its proposed finding of non-impairment.[96] However, a closer examination of these CLECs demonstrates that, for various reasons, not all of

[95] *Id.* Specifically, the FCC states that requiring the trigger-related competitive switch providers to be "capable of serving the entire market" "prevents counting switch providers that provide services that are desirable only to a particular segment of the market." *Id.*

[96] West/Peduto Direct (Verizon NJ), Attachment 2.

them should be relied upon by the Board for the purpose of making a finding of non-impairment.

The carriers include: **<<<BEGIN PROPRIETARY**

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79. **< < < BEGIN PROPRIETARY**

END PROPRIETARY.> > >[97] SBC and Ameritech, when seeking regulatory approval for their merger applications, promised to enter local markets as "out-of-region" local competitors. By "out-of-region" I mean in an area where the company is not the ILEC, but rather is a new entrant seeking to compete with the incumbent carrier. SBC and Ameritech filed an application for approval of their merger with the FCC on July 27, 1998, and promised, if the merger

[97]Footnotes 97 through 106 are proprietary.

were approved, that SBC would enter 30 out-of-region markets throughout the country.[107] This obligation requires SBC to enter local markets in 30 cities, *not in 30 MSAs.*

80. SBC, a multi-billion dollar company, has vast resources. Furthermore, it has a century of experience offering local telecommunications service, substantial experience as an incumbent carrier negotiating interconnection agreements with CLECs (which it brings to the negotiating table when it negotiates interconnection agreements as a CLEC with Verizon NJ), has relevant technical expertise, and possesses substantial brand recognition. SBC has a unique and formidable ability to enter local markets in New Jersey.

81. The FCC transformed the carrier's *promises* to enter out-of-region markets as a CLEC into *regulatory conditions.*[108] The fact that SBC's entry into out-of-region local markets was among the *conditions* of the FCC's approval of the merger simply underscores the regulatory concern that, absent such an explicit requirement, SBC, despite its substantial size, resources, and expertise serving the local market, might have decided not to enter markets in New Jersey (and other out-of-region markets), once it had obtained the requisite regulatory approval to merge.

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[107] In re: Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, for Consent to Transfer Control, FCC CC Docket No. 98-141, *Application*, filed July 27, 1998, § II.A.1.

[108] In re: Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control, FCC CC Docket No. 98-141, *Memorandum Opinion and Order*, released October 8, 1999 ("SBC/Ameritech Merger Order"), ¶¶ 398-399, Appendix E. The FCC's conditions require SBC to enter 30 of 50 potential out-of-region markets.

82. A close examination of SBC's entry into New Jersey's local markets illustrates the complexities of analyzing the local market. The size of a company may affect that firm's ability to raise capital and to allocate resources to local entry, but in no way alters whether management perceives entry into a new market to be profitable, and thus worthy of active pursuit. CLECs' ability *and* willingness to enter and serve a market are both critical factors in an assessment of non-impairment.[109]

83. Skepticism about SBC's planned entry into out-of-region market was expressed at the time of its proposed merger with Ameritech: "SBC's fiduciary responsibilities lie with its stockholders, not its customers, and if top management subsequently determines that out-of-region markets are not likely to become profitable within a reasonable period of time, SBC may well abort or scale back its National/Local strategy."[110] Furthermore, one of SBC's own managers recognized that local entry might not be profitable. As was observed at the time the application was pending regulatory approval, "Mr. Kahan specifically states that the business plan for the National/Local Strategy contemplates a 'negative cash flow for nearly ten years.'"[111] Also, the following was

[109]The FCC directs states to assess whether "customers [are] actually being served. *TRO*, ¶ 495.

[110]In re Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control, Federal Communications Commission CC Docket No. 98-141, Affidavit of Susan M. Baldwin and Helen E. Golding, on behalf of Indiana Utility Consumer Counselor, Michigan Attorney General, Missouri Public Counsel, Ohio Consumers' Counsel, Texas Public Utility Counsel and Utility Reform Network, filed on October 13, 1998, at ¶ 41.

[111]*Id.*, at footnote 65, citing James S. Kahan (SBC), at ¶ 80.

observed: "The Applicants' claims with respect to the benefits for residential and small business market are particularly unpersuasive. In fact, the Applications are openly disparaging of the residential and small business market."[112]

84. If the local mass market is as open and attractive to competition as Verizon NJ apparently wishes regulators to believe, one would expect the data to support such a finding. Throughout the state of New Jersey, SBC serves **< < < BEGIN PROPRIETARY END PROPRIETARY > > >** with its self-provisioned switches.[113] SBC also provided year-end (2003) quantities as follows: < < < BEGIN PROPRIETARY **END PROPRIETARY > > >** [114] Based on this **< < < BEGIN PROPRIETARY END PROPRIETARY** > > > entry and the fact that the entry that has occurred is a direct result of a regulatory obligation, I recommend that the Commission exclude SBC in its determination of whether the self-provisioning trigger is met in New Jersey markets. As I discuss in Section VI, if, contrary to my recommendation, the FCC includes SBC in the application of the network unbundling framework, I recommend that the FCC increase the required minimum of self-provisioning CLECs to four. In other words, if the FCC intends to apply the trigger in an excessively lenient fashion (*i.e.,* including CLECs with a negligible market presence),

[112] *Id.*, at ¶ 87.

[113] SBC response to RPA-TRO-3.

[114] SBC response to RPA-TRO-119.

it is important to increase the number of CLECs that must be self-provisioning to demonstrate non-impairment.

85. Verizon NJ, in its direct case in New Jersey, referred to CLECs' switch deployment in two ways. First, on page 18 of Verizon NJ's direct testimony, Verizon NJ includes a table that summarizes the quantities of switches deployed by each CLEC in New Jersey according to the LERG. Second, and more significantly, in Attachment 2 to its testimony, Verizon NJ identifies those CLECs that it contends provide evidence that the FCC-established self-provisioning trigger is met within certain markets. I focused my analysis in particular on the CLECs encompassed in Attachment 2 to Verizon NJ's testimony because as I understand Verizon NJ's testimony, the earlier table is included solely to provide contextual information but does not, *per se,* shed light on whether the self-provisioning trigger is met in particular markets. Furthermore, I would note that several of the CLECs identified on page 18 of Verizon NJ's direct testimony do not offer voice grade telecommunications service.

86. I analyzed the CLECs that Verizon NJ contended provide evidence related to its claim of non-impairment.[115] Verizon NJ contends that the switch deployment by ten CLECs provide evidence that the self-provisioning trigger is met, and specifically that in the Newark MSA, nine CLECs self-provision switches and in the Camden MSA, five CLECs self-provision switches.[116]

[115]My analysis focuses on those CLECs that Verizon NJ identifies in its filing to the Board.

[116]West/Peduto Direct (Verizon NJ), at 26-27.

According to Verizon NJ, the Board should find non-impairment in the wire centers that are classified in density zones 1 and 2 in these two MSAs.

Verizon NJ's proposal fails to consider significant market structure disparities within its proposed non-impairment boundaries.

87. Initially, Verizon NJ described the purported benefits of using MSAs, and then stated that the Board could choose to use density zones within the MSAs.[117] The Newark and Camden MSAs include wire centers with density zone classifications of 1, 2, or 3.[118] Under the "alternative" proposal, Verizon NJ seeks a finding of non-impairment only for those wire centers classified in density zones 1 and 2.[119] Verizon NJ, however, fails to address or to provide any compelling evidence as to why it excludes zone 3 territory and why it contends there is no impairment in zones 1 and 2.

88. Attachment SMB-9 lists the 81 Verizon NJ-proposed non-impairment wire centers in the Newark MSA and the fifteen proposed non-impairment wire centers in the Camden MSA. Confidential Attachment SMB-10 provides these data separately for the two MSAs by wire center and encompasses *all* the wire centers within the respective MSA boundaries, regardless of whether

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[117]*Id.*, at 11-14.

[118]Three density zones exist for pricing UNE loops in New Jersey. *Wholesale Loop Costs*, Summary Order of Approval, New Jersey Board of Public Utilities Docket No. TO00060356, December 17, 2001, Attachment A.

[119]Verizon NJ response to RPA-TRO-93.

Verizon NJ considers them to be a "relief" area (*i.e.*, the attachment also includes the density zone 3 wire centers). Confidential Attachment SMB-10 also provides information about the quantities of retail and wholesale lines served, specifies the density zone, and provides other market structure data. I have grouped the wire centers in this exhibit by county to retain the geographic information that county boundaries provide. Attachment SMB-11 shows the county boundaries in New Jersey.[120]

89. The portion of total lines that rely on UNE-P in the MSAs for which Verizon NJ proposes a finding of non-impairment **<<<BEGIN PROPRIETARY END PROPRIETARY>>>** from the total lines that rely on UNE-P that Verizon NJ excludes from its proposed non-impairment markets. In the proposed non-impairment portion of the MSA, UNE-Ps represent **<<<BEGIN PROPRIETARY END PROPRIETARY>>>** percent of the lines, and in the rest of the MSA (the "non-non-impairment" or "non-relief" portion), UNE-P represents **<<<BEGIN PROPRIETARY END PROPRIETARY>>>** percent of the total lines. Confidential Attachment SMB-12 provides these data separately by wire center for each of the two MSAs.

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[120]http://www.rce.rutgers.edu/images/maps/nj-counties.gif

90. Within Verizon NJ's proposed non-impairment market, there are **<<<BEGIN PROPRIETARY END PROPRIETARY>>>** resale and UNE-P switched access lines,[121] **<<<BEGIN PROPRIETARY END PROPRIETARY>>>**[122] UNE loops, and **<<<BEGIN PROPRIETARY END PROPRIETARY** Verizon NJ-served retail lines[123] indicating that CLECs serve **<<<BEGIN PROPRIETARY END PROPRIETARY>>>** percent of the end user market (with resale, UNE-P, and UNE-L).

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[121] Verizon NJ response to RPA-TRO-97.

[122] This quantity, which corresponds with Verizon NJ's Line Count Study, is provided in Verizon NJ's confidential response to RPA-TRO-96. Verizon NJ excluded CLECs that "provide solely data services over copper loop facilities, without offering voice services" and included EELs in its Line Count Study. West/Peduto Direct (Verizon NJ), at 22.

[123] Verizon NJ response to RPA-TRO-94.

Table 2

Local Market Structure in Verizon NJ Proposed "Relief" Area Compared with Local Market Structure Statewide

Entry Mode	**Verizon NJ Proposed "Relief" Area**		**Statewide**	
	Lines	**% of Market**[124]	**Lines**	**% of Market**
UNE-P, resale				
UNE Loop				
Verizon Retail				
Total Market				

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As Table 2 shows, this level of CLEC presence **<<<BEGIN PROPRIETARY**

END PROPRIETARY>>>[125] of the end user market (with resale, UNE-P, and UNE-L).[126]

[124]Numbers do not add to 100% due to rounding.

[125]Verizon NJ responses to RPA-TRO-57. This number, according to Verizon NJ, excludes EELs and may include instances where CLECs offer data services only, and, therefore, is not precisely comparable to the UNE loop data shown for Verizon NJ's proposed "relief" area..

[126]Verizon NJ responses to RPA-TRO-55, RPA-TRO-57, and RPA-TRO-97.

A finding of non-impairment would severely jeopardize competitive choice for mass market customers.

91. Attachment SMB-13 shows that local competition in **<<<BEGIN PROPRIETARY END PROPRIETARY>>>** of the wire centers in Verizon NJ's proposed non-impairment markets is entirely UNE-P based. This attachment shows that **<<<BEGIN PROPRIETARY END PROPRIETARY>>>** of the 96 wire centers encompassed by Verizon NJ's proposed non-impairment markets do not have *any* UNE-loop activity. Furthermore, this attachment demonstrates that over **<<<BEGIN PROPRIETARY END PROPRIETARY>>>** CLEC-served lines are *in areas where CLECs are not serving customers with self-provisioned switches, (i.e.*, they are using UNE-P) and, therefore, a finding of non-impairment would jeopardize competitive choice for these customers.

92. Attachment SMB-14 shows UNE-loop activity within each of the two MSAs, by wire center, and further shows the numbers of loops associated with customers of different sizes. Among other things, Attachment SMB-14 shows that UNE loop presence <<<**BEGIN PROPRIETARY** >>>**END PROPRIETARY** of the wire centers in Verizon NJ's proposed non-impairment markets. Table 3 summarizes the data in Attachment SMB-14, and shows the total numbers of wire centers with and without UNE-L activity in each of the four relief areas proposed by Verizon NJ.

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Table 3

UNE-Loop Presence Is Non-Existent in Many Wire Centers in Verizon NJ's Proposed Non-Impairment Region

Market Area	Total Wire Centers in Relief Area	Wire Centers with Customers Served by UNE-L	Wire Centers without Customers Served by UNE-L
Newark, Zone 1			
Newark, Zone 2			
Camden, Zone 1			
Camden, Zone 2			
Total			

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Sources: Verizon responses to RPA 2-92 and RPA 2-104

93. Attachment SMB-15, which includes the same data as that shown in Attachment SMB-14, but instead grouped by county, shows that although CLECs may use self-provisioned switches to serve one wire center, such deployment does not necessarily translate into CLECs serving adjacent wire centers. For example, Confidential Attachment SMB-15 shows that **<<<BEGIN PROPRIETARY**

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94. The FCC stated that "...a switch can theoretically serve wide areas (provided that the costs of transporting traffic back to the switch are not cost prohibitive)."[127] However, the *absence* of any UNE loop activity in some wire centers within the same county boundaries as contains wire centers *with* UNE loop activity, and within Verizon NJ's proposed market areas underscores the importance of differentiating between *theory* and *practice.* The evidence also demonstrates the infirmities of Verizon NJ's proposed geographic market.

95. The disparity in the level of CLECs' UNE loop activity among wire centers that Attachment SMB-15 shows is evidence that Verizon NJ's proposed market boundary is too broad. Combined with the anomalies I described earlier regarding the inclusion of non-contiguous areas within a single market, this disparity demonstrates that Verizon NJ's proposed geographic market boundaries are woefully unsupported and inadequate for the purpose of applying the FCC's self-provisioning trigger.

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[127] *TRO,* footnote 1536, elaborating on ¶ 495.

96. Although Verizon NJ fails to meet the FCC-established self-provisioning trigger *regardless of the geographic boundaries chosen,* should the Commission adopt an overly broad geographic market, this definition could lead to uneconomic outcomes in any future filings by Verizon NJ. The geographic market should include areas with similar market structure characteristics and should serve as a reasonable foundation for filings that Verizon NJ may make in future years. As the FCC observed:

> The exact parameters of these geographic markets, however, cannot be defined nationally for switching because, as both incumbent LECs and competitive LECs agree, *there are extreme variations in population density, and thus wire center line densities, across the country.*[128]

To meet the FCC-specified self-provisioning trigger, three or more CLECs must actually serve the entire market, including both residential and small business customers.

97. Attachment SMB-16 shows that residential consumers rely on CLECs' UNE-P based entry for competitive choice, and also shows that the degree of their reliance **<<<BEGIN PROPRIETARY**

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[128] *Id.*, emphasis added.

98. It is important to consider the substantial implications of prematurely foreclosing CLECs' access to unbundling switching. Residential consumers will bear the brunt of an erroneous finding of non-impairment because they will lose competitive choice and then, among consumer groups, will disproportionately depend on a single supplier of an essential service.

99. Attachment SMB-17 includes the CLECs that Verizon NJ identified in its direct testimony in purported support of its finding of non-impairment. Of the carriers, **<<<BEGIN PROPRIETARY**

END PROPRIETARY>>>[129] [130] [131]

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[129]**<<<BEGIN PROPRIETARY** **END PROPRIETARY>>>**

[130]West/White Supplemental (Verizon NJ), at 6.

[131]**<<<BEGIN PROPRIETARY** **END PROPRIETARY>>>** response to Staff data requests.

100. I examined the evidence to determine whether self-provisioning CLECs serve residential and small business customers *throughout* Verizon NJ's proposed relief area. As Attachment SMB-18 shows, **<<<BEGIN PROPRIETARY**

END PROPRIETARY>>>[132] If CLECs are not actually serving residential customers throughout a market, they should not be counted toward the self-provisioning trigger. Alternatively, at least three CLECs must serve residential customers and at least three CLECs (and not necessarily the same CLECs) must serve small business customers.

101. As I discuss in more detail in Section III, the residential market is clearly a distinct customer class within the mass market. Verizon NJ charges different rates for residential and business local exchange service. Its ability to price discriminate is evidence of separate markets.[133]

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[132] **<<<BEGIN PROPRIETARY**

END PROPRIETARY>>> Verizon response to RPA-TRO-96.

[133] As I discuss in Section III, above, Attachment SMB-3 demonstrates that price discrimination differentiates areas within Verizon NJ's proposed geographic markets. This geographically-based price discrimination undermines the validity of Verizon NJ's proposed, excessively broad geographic areas.